

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRACY LYNN COWAN,

Petitioner,

v.

Case No. 06-13846

CLARICE STOVALL,

Respondent.

/

**OPINION AND ORDER DENYING A CERTIFICATE OF APPEALABILITY AND
GRANTING APPLICATION TO APPEAL *IN FORMA PAUPERIS***

On July 15, 2021, the court issued an opinion and order denying Petitioner's application for habeas relief brought pursuant to 28 U.S.C. § 2254 and also declined to issue a certificate of appealability. (ECF No. 86.) Petitioner has now filed a motion for certificate of appealability (ECF No. 90), which the court will construe as a motion for reconsideration of its prior opinion and order. Petitioner has also filed an application to appeal *in forma pauperis*. (ECF No. 89.) For the reasons stated below, the motion for a certificate of appealability will be denied, but Petitioner will be granted leave to appeal *in forma pauperis*.

Petitioner initially requests a certificate of appealability. Because the court already rejected this request when it denied her petition for writ of habeas corpus (ECF No. 86, PageID.2971), the court construes Petitioner's motion before the court as a motion for reconsideration of the court's previous order. See, e.g., *Jackson v. Crosby*, 437 F.3d 1290, 1294, n. 5 (11th Cir. 2006); *Mell v. Skipper*, No. 2:18-CV-11971, 2019 WL 2635968, at *1 (E.D. Mich. June 27, 2019) (Borman, J.).

To prevail on a motion for reconsideration, a party “must not only demonstrate a palpable defect by which the Court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.” See E.D. Mich. LR 7.1(h)(3); *see also Indah v. U.S. Sec. & Exch. Comm’n*, 661 F.3d 914, 924 (6th Cir. 2011). “A ‘palpable defect’ is a defect which is obvious, clear, unmistakable, manifest, or plain.” *Hawkins v. Genesys Health Sys.*, 704 F. Supp. 2d 688, 709 (E.D. Mich. 2010) (Borman, J.). “[T]he Court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the Court, either expressly or by reasonable implication.” See E.D. Mich. L.R. 7.1(h)(3); *see also Bowens v. Terris*, No. 2:15-CV-10203, 2015 WL 3441531, at *1 (E.D. Mich. May 28, 2015) (Steeh, J.).

Other than conclusory or unsupported allegations, Petitioner has failed to advance any arguments in her motion which show that this court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. Petitioner’s request for reconsideration will therefore be denied because Petitioner is merely presenting issues which were already ruled upon by this court, either expressly or by reasonable implication, when the court denied Petitioner’s application for writ of habeas corpus and denied her a certificate of appealability. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

Petitioner has also filed an application to appeal *in forma pauperis*. (ECF No. 89.) The standard for granting an application for leave to proceed *in forma pauperis* is less stringent. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002) (citing *United States v. Youngblood*, 116 F. 3d 1113, 1115 (5th Cir. 1997)). Whereas a

certificate of appealability may be granted only if a petitioner makes a substantial showing of the denial of a constitutional right, a court may grant *in forma pauperis* status if it finds that an appeal is being taken in good faith. *Id.* at 764-65; 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a). “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although jurists of reason would not debate the court’s resolution of the habeas petition, the issues are not frivolous; therefore, an appeal could be taken in good faith and petitioner may proceed *in forma pauperis* on appeal. *Id.* Accordingly,

IT IS ORDERED that Petitioner’s Motion for Certificate of Appealability (ECF No. 90) is DENIED.

IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* on appeal (ECF No. 89) is GRANTED.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 27, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 27, 2021, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522